

EXHIBIT A

1 STANLEY M. SLONAKER
2 ATTORNEY AT LAW
3 343 WEST ROOSEVELT STREET
4 SUITE 210
5 PHOENIX, ARIZONA 85003-1324
(602) 258-1121
Stan@SSlonaker.us
STATE BAR NUMBER 7503

MICHAEL K. JEANES
Clerk of the Superior Court
By Victor Canisales, Deputy
Date 05/08/2017 Time 15:21:21
Description Amount
CASE# CV2017-006938
CIVIL NEW COMPLAINT 319.00
TOTAL AMOUNT 319.00
Receipt# 25920656

5 ATTORNEY FOR PLAINTIFF

6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

7 IN AND FOR THE COUNTY OF MARICOPA

8 JOSE ACOSTA,

9 Plaintiff,

10 vs.

11 K MART CORPORATION, a foreign
12 corporation, K-MART CENTER
13 LIMITED PARTNERSHIP, an Arizona
14 limited partnership, BCI COCA-COLA
15 BOTTLING COMPANY OF LOS
16 ANGELES, a foreign corporation,
COCA-COLA REFRESHMENTS U.S.A.
INC., a foreign corporation, JOHN DOE
I-X, BLACK & WHITE ENTITY I-X,

17 Defendants.

No. CV 2017-006938

COMPLAINT

(Tort, Non-Motor Vehicle)

18
19 COMES NOW Plaintiff Jose Acosta, through undersigned counsel, and for his
20 cause of action in this matter, states and alleges as follows:

21 INTRODUCTION

22 1. This is an action for money damages against Defendants K Mart Corporation,
23 K-Mart Center Limited Partnership, BCI Coca-Cola Bottling Company of Los Angeles and
24 Coca-Cola Refreshments U.S.A. Inc., as well as fictitious entities and persons acting as
25 employees and/or agents of each named and unnamed entity. The corporate defendants as
26 well as relevant employees and/or agents knew, should have known, caused and/or allowed
27 an unreasonably hazardous and dangerous condition to exist without warning on a shelf
28 displaying large bottles of soft drink products for sale at a K Mart store in Phoenix, Arizona

1 that was open to the public. Plaintiff Jose Acosta was injured when unsafely displayed
2 bottles of a soft drink fell upon him, knocked him to the floor and caused significant resulting
3 injuries.

4 **PARTIES AND JURISDICTION**

5 2. Plaintiff Jose Acosta was at all times relevant herein and is currently a resident
6 of Maricopa County, Arizona.

7 3. Upon information and belief, Defendant K Mart Corporation was at all times
8 relevant herein and remains a corporation organized pursuant to the laws of and domiciled
9 in Michigan.

10 4. Upon information and belief, Defendant K-Mart Center Limited Partnership
11 was at all times relevant herein and remains a limited partnership organized pursuant to the
12 laws of and domiciled in Arizona.

13 5. Upon information and belief, Defendant BCI Coca-Cola Bottling Company of
14 Los Angeles was at all times relevant herein and remains a corporation organized pursuant
15 to the laws of and domiciled in Delaware. Upon information and belief, Defendant BCI
16 Coca-Cola Bottling Company of Los Angeles produced and bottled Dr. Pepper in various
17 packages for retail sale in Phoenix, Arizona at times relevant to this Complaint.

18 6. Upon information and belief, Defendant Coca-Cola Refreshments U.S.A. Inc.,
19 was at all times relevant herein and remains a corporation organized pursuant to the laws of
20 and domiciled in Delaware. Upon information and belief, Defendant Coca-Cola
21 Refreshments U.S.A. Inc. produced and bottled Dr. Pepper in various packages for retail sale
22 in Phoenix, Arizona at times relevant to this Complaint.

23 7. Defendants John Doe I-X and Black & White Entity I-X are being sued herein
24 as fictitious defendants whose true names, citizenships and/or relationships to the subject
25 matter of this claim are unknown or unclear to the Plaintiff at this time. Such fictitiously
26 named defendants include relevant employees and agents of Defendants K Mart Corporation,
27 K-Mart Center Limited Partnership, BCI Coca-Cola Bottling Company of Los Angeles and
28 Coca-Cola Refreshments U.S.A. Inc. who engaged in actions and/or omissions on the

1 premises of the K Mart store which is the subject of this lawsuit. Plaintiff will seek leave to
2 amend this Complaint when the true names, citizenships and relationships to the subject
3 matter of this Complaint become so know to her.

4 8. Defendants K Mart Corporation, K-Mart Center Limited Partnership, BCI
5 Coca-Cola Bottling Company of Los Angeles and Coca-Cola Refreshments U.S.A. Inc. were
6 at all times relevant herein and are currently residents and/or doing business in Maricopa
7 County, Arizona.

8 9. The actions of all Defendants relevant to the Complaint herein occurred in
9 Maricopa County, Arizona.

10 10. Damages sought by the Plaintiff exceed the jurisdictional minimum established
11 for filing this action in the Superior Court of the State of Arizona in and for the County of
12 Maricopa.

STATEMENT OF FACTS

14 11. At all times relevant herein, Defendants K Mart Corporation and K-Mart
15 Center Limited Partnership owned and/or maintained possession and control of commercial
16 property located at 2526 W. Northern Avenue in Phoenix, Arizona (hereinafter "the
17 premises"). The premises were operated as a K Mart store open to the public for retail sales.

18 12. Defendants K Mart Corporation and K-Mart Center Limited Partnership
19 maintained the premises on and in which the incident occurred that is described in this
20 Complaint.

21 13. In opening the premises to the public for retail shopping, Defendants
22 K Mart Corporation and K-Mart Center Limited Partnership as well as employees and/or
23 agents thereof allowed sales displays of soft drink products, including those produced by
24 Defendants BCI Coca-Cola Bottling Company of Los Angeles and Coca-Cola Refreshments
25 U.S.A. Inc., that did not allow large bottles to be safely removed by customers in areas which
26 were open to the public. Defendants K Mart Corporation and K-Mart Center Limited
27 Partnership knew or should have known that allowing large bottles of soft drinks to be
28 offered for sale and removal by customers from shelves that were sticky and/or otherwise

1 hindered removal, particularly Dr. Pepper and other products produced and stocked by
2 Defendants BCI Coca-Cola Bottling Company of Los Angeles and Coca-Cola Refreshments
3 U.S.A. Inc., would almost certainly and repeatedly create unreasonably hazardous and
4 dangerous conditions in which those utilizing the property could be injured by using more
5 force than normally necessary to remove such products from clean and obstruction-free
6 shelves and causing bottles to fall on customers from such display shelves.

7 14. Defendants BCI Coca-Cola Bottling Company of Los Angeles and Coca-Cola
8 Refreshments U.S.A. Inc., produced soft drink products and maintained the sales displays of
9 such products including two liter bottles of Dr. Pepper which were placed on shelves, offered
10 for sale and removal by customers from shelves that were sticky and/or otherwise hindered
11 removal at times relevant to this Complaint.

12 15. On May 7, 2015, Plaintiff Jose Acosta was present as an invitee and shopping
13 in the K Mart store located at 2526 W. Northern Avenue in Phoenix, Arizona. While on the
14 premises, Plaintiff Acosta was shopping for Dr. Pepper stored in two liter bottles.

15 16. At that same time, and without warning and/or correction, the Defendants K
16 Mart Corporation, K-Mart Center Limited Partnership, BCI Coca-Cola Bottling Company
17 of Los Angeles and Coca-Cola Refreshments U.S.A. Inc., had allowed two liter bottles of Dr.
18 Pepper and other products to be displayed for sale and removal by customers from shelves
19 that were sticky and/or otherwise hindered removal. Defendants K Mart Corporation, K-
20 Mart Center Limited Partnership, BCI Coca-Cola Bottling Company of Los Angeles and
21 Coca-Cola Refreshments U.S.A. Inc., knew or should have known that display of such
22 products offered for sale and removal from shelves created at that time an unreasonably
23 hazardous and dangerous condition in which those seeking to purchase two liter bottles of
24 Dr. Pepper and other products could be injured by using more force than normally necessary
25 to attempt removal of such products from clean and obstruction-free shelves and, in doing
26 so, causing bottles to fall on customers from such display shelves.

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1 17. The shelves that were sticky and/or otherwise hindered removal of two liter
2 bottles of Dr. Pepper and other products which existed while Plaintiff Acosta was shopping
3 for such products in that area of the K Mart store was an unreasonably dangerous condition.

4 18. Existence of shelves that were sticky and/or otherwise hindered removal of two
5 liter bottles of Dr. Pepper and other products in the K Mart store was an unreasonably
6 dangerous condition that all Defendants knew or should have reasonably foreseen might
7 endanger an invitee such as Plaintiff Jose Acosta.

8 19. As Plaintiff Acosta attempted to remove a two liter bottle of Dr. Pepper for
9 purchase, he was unable to do so using force normally required to remove such product from
10 clean and obstruction-free shelves. One or more heavy soft drink bottles broke free and fell
11 from the shelf striking Plaintiff Acosta. As he was struck, Plaintiff Acosta then twisted, fell
12 and immediately experienced pain in certain parts of his body. He subsequently identified
13 pain and related conditions in other areas of his body associated with the incident in which
14 he was struck by one or more large bottles of soft drink from the shelf upon which two liter
15 bottles of Dr. Pepper and other products were displayed for sale.

16 20. In being struck by one or more falling bottles of soft drink, twisting and
17 falling in the K Mart store, Plaintiff Jose Acosta suffered serious, significant and permanent
18 injuries which required surgical intervention.

19 21. The Defendants, and each of them, individually and collectively, knew and/or
20 should have known of the unreasonably hazardous and dangerous condition and failed to
21 properly warn the public, remedy the condition, install and maintain proper shelving and/or
22 arrange the products for safe access by customers including Plaintiff Acosta.

23 22. The incident described in this Complaint was in no way caused by Plaintiff
24 Jose Acosta.

COUNT ONE

(Negligence, Premises Liability)

27 23. Plaintiff realleges allegations of paragraphs 1-22 of this Complaint as if fully
28 set forth herein.

1 24. Defendants K Mart Corporation and K-Mart Center Limited Partnership as well
2 as their employees and agents owed Plaintiff Jose Acosta as well as other invitees and
3 customers a duty to provide and maintain reasonably safe premises within the K Mart store.

4 25. Defendants K Mart Corporation and K-Mart Center Limited Partnership as
5 well as their employees and agents had a duty to use reasonable care to foresee, discover,
6 warn of and correct the unreasonably dangerous condition existing on and as the shelf
7 displaying two liter bottles of Dr. Pepper and other products for sale to the public in the K
8 Mart store.

9 26. Defendants K Mart Corporation and K-Mart Center Limited Partnership as
10 well as their employees and agents breached their respective duties when they failed to
11 provide and maintain reasonably safe premises as well as when they failed to foresee,
12 discover, warn of and correct the unreasonably dangerous condition existing on and as the
13 shelf displaying two liter bottles of Dr. Pepper and other products for sale to the public in the
14 K Mart store.

15 27. Said breach of duties by Defendants K Mart Corporation and K-Mart Center
16 Limited Partnership as well as their employees and agents directly and proximately caused
17 damages to Plaintiff Jose Acosta.

COUNT TWO

(Negligence, Premises Liability)

20 28. Plaintiff realleges allegations of paragraphs 1 through 27 of this Complaint as
21 if fully set forth herein.

22 29. Defendants BCI Coca-Cola Bottling Company of Los Angeles and Coca-Cola
23 Refreshments U.S.A. Inc., as well as their employees and agents owed Plaintiff Jose Acosta
24 as well as other invitees and customers a duty to provide and maintain reasonably safe
25 premises upon which products produced by such defendants, including, but not limited to,
26 two liter bottles of Dr. Pepper, were displayed and offered for sale within the K Mart store
27 premises.

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1 30. Defendants BCI Coca-Cola Bottling Company of Los Angeles and Coca-Cola
2 Refreshments U.S.A. Inc. as well as their employees and agents had a duty to use reasonable
3 care to foresee, discover, warn of and correct the unreasonably dangerous condition existing
4 on and as the shelf displaying large bottles of Dr. Pepper and other products for sale to the
5 public in the K Mart store.

6 31. Defendants BCI Coca-Cola Bottling Company of Los Angeles and Coca-Cola
7 Refreshments U.S.A. Inc. as well as their employees and agents breached their respective
8 duties when they failed to provide and maintain reasonably safe premises as well as when
9 they failed to foresee, discover, warn of and correct the unreasonably dangerous condition
10 existing on and as the shelf displaying large bottles of Dr. Pepper and other products for sale
11 to the public in the K Mart store.

12 32. Said breach of duties by Defendants BCI Coca-Cola Bottling Company of Los
13 Angeles and Coca-Cola Refreshments U.S.A. Inc. as well as their employees and agents
14 directly and proximately caused damages to Plaintiff Jose Acosta.

COUNT THREE

(Negligent Supervision)

17 33. Plaintiff realleges and incorporates paragraphs 1 through 32 of this Complaint
18 as if fully set forth herein.

19 34. By way of the conduct and factual allegations contained in this Complaint,
20 Defendants K Mart Corporation and K-Mart Center Limited Partnership as well as their
21 supervisory employees and agents were negligent in setting and following business policies
22 for as well as accomplishing training and supervision of employees, agents and contractors
23 of Defendants K Mart Corporation and K-Mart Center Limited Partnership in relation to
24 operating and maintaining the premises of the K Mart store described in this Complaint.

25 35. Defendants K-Mart Corporation and K-Mart Center Limited Partnership as well
26 as their supervisory employees and agents owed Plaintiff Jose Acosta the duty of due care
27 in the supervision of employees in operating and maintaining the premises of the K Mart
28 store described in this Complaint.

1 36. Defendants K Mart Corporation and K-Mart Center Limited Partnership as well
2 as their supervisory employees and agents breached their duty of due care as to Plaintiff Jose
3 Acosta by the above-stated negligent supervision of others and their activities pursuant to
4 business policies and applicable law.

5 37. Said breaches of duty by Defendants K Mart Corporation and K-Mart Center
6 Limited Partnership as well as their supervisory employees and agents directly and
7 proximately caused damages to Plaintiff Jose Acosta.

8 38. Although styled as a single count, this Count includes as individual actionable
9 occurrences all separate actions by Defendants K Mart Corporation and K-Mart Center
10 Limited Partnership as well as their supervisory employees and agents.

COUNT FOUR

(Negligent Supervision)

13 39. Plaintiff realleges and incorporates paragraphs 1 through 38 of this Complaint
14 as if fully set forth herein.

15 40. By way of the conduct and factual allegations contained in this Complaint,
16 Defendants BCI Coca-Cola Bottling Company of Los Angeles and Coca-Cola Refreshments
17 U.S.A. Inc. as well as their supervisory employees and agents were negligent in setting and
18 following its business policies for as well as accomplishing training and supervision of
19 employees, agents and contractors of Defendants BCI Coca-Cola Bottling Company of Los
20 Angeles and Coca-Cola Refreshments U.S.A. Inc. in relation to operating and maintaining
21 the premises upon which products produced by such defendants, including, but not limited
22 to, two liter bottles of Dr. Pepper, were displayed and offered by sale within the K Mart store
23 described in this Complaint.

24 41. Defendants BCI Coca-Cola Bottling Company of Los Angeles and Coca-Cola
25 Refreshments U.S.A. Inc. as well as their supervisory employees and agents owed Plaintiff
26 Jose Acosta the duty of due care in the supervision of its employees in operating and
27 maintaining the premises upon which products produced by such defendants, including, but

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1 not limited to, two liter bottles of Dr. Pepper, were displayed and offered by sale within the
2 K Mart store described in this Complaint.

3 42. Defendants BCI Coca-Cola Bottling Company of Los Angeles and Coca-Cola
4 Refreshments U.S.A. Inc. as well as their supervisory employees and agents breached their
5 duty of due care as to Plaintiff by the above-stated negligent supervision of others and their
6 activities pursuant to business policies and applicable law.

7 43. Said breaches of duty by Defendants BCI Coca-Cola Bottling Company of Los
8 Angeles and Coca-Cola Refreshments U.S.A. Inc. as well as their supervisory employees and
9 agents directly and proximately caused damages to Plaintiff Jose Acosta.

10 44. Although styled as a single count, this Count includes as individual actionable
11 occurrences all separate actions by Defendants BCI Coca-Cola Bottling Company of Los
12 Angeles and Coca-Cola Refreshments U.S.A. Inc. as well as their supervisory employees and
13 agents.

14 DAMAGES

15 45. All Defendants directly and proximately caused Plaintiff Jose Acosta to suffer
16 extreme and lasting physical injuries as well as pain and suffering. Such damages will
17 be shown at the time of trial in this matter. All such injuries impaired Plaintiff Acosta's
18 bodily functions and abilities to perform within a normal context on every-day tasks.

19 46. All Defendants directly and proximately caused Plaintiff Jose Acosta to incur
20 expenses for medical care, said damages all in an amount to be proven at time of trial.

21 47. All Defendants directly and proximately caused Plaintiff Jose Acosta to suffer
22 consequential losses in an amount to be proven at the time of trial.

23 WHEREFORE, Plaintiff Jose Acosta prays for judgment against Defendants K Mart
24 Corporation, K-Mart Center Limited Partnership, BCI Coca-Cola Bottling Company of Los
25 Angeles, Coca-Cola Refreshments U.S.A. Inc., John Doe I-X and Black & White Entity I-X
26 as follows:

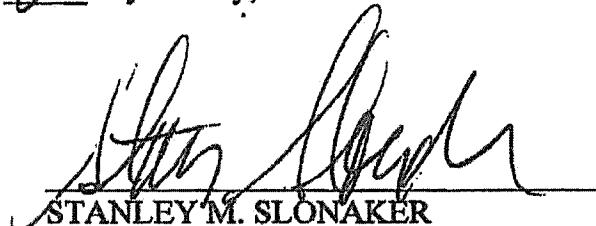
27 A. For appropriate special damages in an amount to be proven at the time of trial
28 in this matter.

1 B. For appropriate general compensatory damages in an amount to be proven at
2 the time of trial in this matter; and

3 C. For such other and further relief as this Court deems just and fair under the
4 circumstances of this case.

5 RESPECTFULLY SUBMITTED this 8th day of May, 2017.

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STANLEY M. SLONAKER

EXHIBIT B

1 Grant D. Waterkotte, Esq., SBN 029312
2 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**
3 11622 El Camino Real, Suite 300
4 San Diego, California 92130-2051
5 Telephone: (310) 649-5772
6 Facsimile: (310) 649-5777
7 E-mail: gwaterkotte@pettitkohn.com

5 Attorneys for Defendant
6 **KMART CORPORATION (Erroneously sued herein
as K Mart Corporation; K-Mart Center Limited
Partnership)**

8 **SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **COUNTY OF MARICOPA**

10 JOSE ACOSTA,

CASE NO.: CV 2017-006938

11 Plaintiff,

12 v.

13 K MART CORPORATION, a foreign
14 corporation, K-MART CENTER
15 LIMITED PARTNERSHIP, an Arizona
16 limited partnership, BCI COCA-COLA
17 BOTTLING COMPANY OF LOS
18 ANGELES, a foreign corporation,
19 COCA-COLA REFRESHMENTS U.S.A.
INC., a foreign corporation, JOHN DOE
I-X, BLACK & WHITE ENTITY I-X,

**DEFENDANT KMART
CORPORATION'S ANSWER TO
PLAINTIFF'S COMPLAINT**

Assigned to the Honorable: Karen Mullins

Defendants.

20 Defendant KMART CORPORATION (Erroneously sued herein as K Mart
21 Corporation; K-Mart Center Limited Partnership) ("Defendant"), by and through
22 undersigned counsel, for its Answer to Plaintiff's Complaint, admits, denies and alleges as
23 follows:

24 Defendant denies each and every, all and singular, of the allegations contained in
25 Plaintiff's Complaint and each claim for relief thereof which is not herein after expressly
26 admitted or otherwise pled to.

27 1. As to paragraph 1 of Plaintiff's complaint, without admitting to the merits of
28 Plaintiff's allegations in his paragraph 1, titled introduction to the complaint, Defendant

1 admits that Plaintiff's complaint is against different fictitious entities. Defendant further
2 admits that it displayed soft drink products for sale in its store located in Phoenix Arizona.
3 However, as to the remaining allegations contained within this paragraph of the
4 complaint, Defendant denies that an unreasonably dangerous condition existed at the time
5 of the incident, and/or that this Defendant caused Plaintiff any harm. As to the nature and
6 extent of Plaintiff's alleged injuries, Defendant lacks sufficient information to form a
7 belief as to the truth of these allegations contained in Paragraph 1 of Plaintiff's Complaint
8 and therefore denies same.

9 2. As to paragraph 2 of Plaintiff's complaint, this paragraph contains legal
10 assertions or conclusions as to Plaintiff's residence to which no responsive pleading is
11 required.

12 3. As to paragraph 3 of Plaintiff's complaint, Defendant admits its corporation
13 status domiciled in Michigan.

14 4. As to paragraph 4 of Plaintiff's complaint, K-Mart Center Limited
15 Partnership is an improper party in this matter and Kmart Corporation is the appropriate
16 corporate entity.

17 5. As to paragraph 5 of Plaintiff's complaint, Defendant lacks sufficient
18 information to form a belief as to the truth of the allegations contained within this
19 paragraph as it relates to other corporate Defendant(s).

20 6. As to paragraph 6 of Plaintiff's complaint, Defendant lacks sufficient
21 information to form a belief as to the truth of the allegations contained within this
22 paragraph as it relates to other corporate Defendant(s).

23 7. As to paragraph 7 of Plaintiff's complaint, this paragraph contains legal
24 assertions or conclusions to which no responsive pleading is required at this time.

25 8. As to paragraph 8 of Plaintiff's complaint, Defendant admits that it conducts
26 business in Maricopa County, Arizona.

27 9. As to paragraph 9 of Plaintiff's complaint, Defendant admits that the facts
28 giving raise to this action are alleged to have occurred in Maricopa County, Arizona.

1 10. As to paragraph 10 of Plaintiff's complaint, it contains legal assertions or
2 conclusions to which no responsive pleading is required.

3 11. As to paragraph 11 of Plaintiff's complaint, Defendant admits that it
4 operates a Kmart store located at 2526 W. Northern Avenue, in Phoenix, Arizona.

5 12. As to paragraph 12 of Plaintiff's complaint, Defendant admits that it
6 maintains the premises where the alleged incident occurred.

7 13. As to paragraph 13 of Plaintiff's complaint, Defendant admits that it
8 displays and sells soft drinks within its store, but denies the remaining allegations of
9 wrongdoing contained within this paragraph.

10 14. As to paragraph 14 of Plaintiff's complaint, Defendant lacks sufficient
11 information to form a belief as to the truth of the allegations contained within this
12 paragraph as it relates to other corporate Defendant(s).

13 15. As to paragraph 15 of Plaintiff's complaint, Defendant admits that Plaintiff
14 was visiting its store on the date referenced within this paragraph of Plaintiff's Complaint.

15 16. As to paragraph 16 of Plaintiff's complaint, Defendant denies that it created
16 or allowed to exist an unreasonably dangerous condition that caused Plaintiff harm.

17 17. As to paragraph 17 of Plaintiff's complaint, Defendant denies the
18 allegations contained therein.

19 18. As to paragraph 18 of Plaintiff's complaint, Defendant denies the
20 allegations contained therein.

21 19. As to paragraph 19 of Plaintiff's complaint, Defendant denies the
22 allegations as phrased by Plaintiff.

23 20. As to paragraph 20 of Plaintiff's complaint, Defendant lacks sufficient
24 information to form a belief as to the extent of Plaintiff's injuries and therefore denies
25 same.

26 21. As to paragraph 21 of Plaintiff's complaint, contains legal assertions or
27 conclusions to which no responsive pleading is required.

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1 22. As to paragraph 22 of Plaintiff's complaint, Defendant denies the
2 allegations contained therein.

3 23. As to paragraph 23 of Plaintiff's complaint, contains legal assertions or
4 conclusions to which no responsive pleading is required.

5 24. As to paragraph 24 of Plaintiff's complaint, contains legal assertions or
6 conclusions to which no responsive pleading is required.

7 25. As to paragraph 25 of Plaintiff's complaint, contains legal assertions or
8 conclusions to which no responsive pleading is required. As to Plaintiff's allegation of
9 the existence of an unreasonable dangerous condition, Defendant denies same.

10 26. As to paragraph 26 of Plaintiff's complaint, contains legal assertions or
11 conclusions to which no responsive pleading is required. As to Plaintiff's allegation of
12 the existence of an unreasonable dangerous condition, Defendant denies same. Defendant
13 denies further Plaintiff's allegations stating that Defendant breached its duty of
14 care to its patrons and that it acted negligently and failed to exercise reasonable care.

15 27. As to paragraph 27 of Plaintiff's complaint, Defendant denies Plaintiff's
16 allegations stating that Defendant breached its duty of care to its patrons. Defendant
17 further denies that it caused Plaintiff harm.

18 28. As to paragraph 28 of Plaintiff's complaint, contains legal assertions or
19 conclusions to which no responsive pleading is required.

20 29. As to paragraph 29 of Plaintiff's complaint, Defendant lacks sufficient
21 information to form a belief as to the truth of the allegations contained within this
22 paragraph as it relates to other corporate Defendant(s).

23 30. As to paragraph 30 of Plaintiff's complaint, Defendant lacks sufficient
24 information to form a belief as to the truth of the allegations contained within this
25 paragraph as it relates to other corporate Defendant(s).

26 31. As to paragraph 31 of Plaintiff's complaint, Defendant lacks sufficient
27 information to form a belief as to the truth of the allegations contained within this
28 paragraph as it relates to other corporate Defendant(s).

1 32. As to paragraph 32 of Plaintiff's complaint, Defendant lacks sufficient
2 information to form a belief as to the truth of the allegations contained within this
3 paragraph as it relates to other corporate Defendant(s).

4 33. As to paragraph 33 of Plaintiff's complaint, contains legal assertions or
5 conclusions to which no responsive pleading is required.

6 34. As to paragraph 34 of Plaintiff's complaint, Defendant denies them.

7 35. As to paragraph 35 of Plaintiff's complaint, Defendant denies them.

8 36. As to paragraph 36 of Plaintiff's complaint, Defendant denies them.

9 37. As to paragraph 37 of Plaintiff's complaint, Defendant denies them.

10 38. As to paragraph 38 of Plaintiff's complaint, Defendant denies them.

11 39. As to paragraph 38 of Plaintiff's complaint, contains legal assertions or
12 conclusions to which no responsive pleading is required.

13 40. As to paragraph 40 of Plaintiff's complaint, Defendant lacks sufficient
14 information to form a belief as to the truth of the allegations contained within this
15 paragraph as it relates to other corporate Defendant(s).

16 41. As to paragraph 41 of Plaintiff's complaint, Defendant lacks sufficient
17 information to form a belief as to the truth of the allegations contained within this
18 paragraph as it relates to other corporate Defendant(s).

19 42. As to paragraph 42 of Plaintiff's complaint, Defendant lacks sufficient
20 information to form a belief as to the truth of the allegations contained within this
21 paragraph as it relates to other corporate Defendant(s).

22 43. As to paragraph 43 of Plaintiff's complaint, Defendant lacks sufficient
23 information to form a belief as to the truth of the allegations contained within this
24 paragraph as it relates to other corporate Defendant(s).

25 44. As to paragraph 44 of Plaintiff's complaint, Defendant lacks sufficient
26 information to form a belief as to the truth of the allegations contained within this
27 paragraph as it relates to other corporate Defendant(s).

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1 45. As to paragraph 45 of Plaintiff's complaint, Defendant denies causing
2 Plaintiff any harm. As to Plaintiff's allegations of physical injuries and the extent of
3 these, Defendant lacks sufficient information to form a belief as to the truth of these
4 allegations as they relate to Plaintiff's subjective mindset and belief and therefore denies
5 same.

6 46. As to paragraph 46 of Plaintiff's complaint, Defendant denies causing
7 Plaintiff any harm. As to Plaintiff's allegations of incurring in certain medical expenses,
8 Defendant lacks sufficient information to form a belief as to the truth of these allegations
9 as they relate to Plaintiff's subjective mindset and belief and therefore denies same.

10 47. As to paragraph 47 of Plaintiff's complaint, Defendant denies causing
11 Plaintiff any harm. As to Plaintiff's allegations of suffering consequential losses,
12 Defendant lacks sufficient information to form a belief as to the truth of these allegations
13 as they relate to Plaintiff's subjective mindset and belief and therefore denies same.

14 Defendant lacks sufficient information to form a belief as to the truth of the
15 allegations and damages claims contained within Plaintiff's prayer for damages, and
16 therefore denies responsibility for such damages as pled at this time.

AFFIRMATIVE DEFENSES

18 1. As and for a separate defense and in the alternative, Defendant alleges, upon
19 information and belief, that Plaintiff has failed to mitigate her damages or avoid
20 consequences leading to Plaintiff's alleged injuries, all of which bars or reduces recovery
21 to the Plaintiff from Defendant.

22 2. As and for a separate defense and in the alternative, Defendant alleges that
23 Plaintiff's alleged injuries may be the result of pre-existing injuries or medical conditions
24 unrelated to those alleged to have occurred in the subject accident which may bar recovery
25 or reduce recovery to the Plaintiff herein from Defendant.

26 3. As and for a separate defense and in the alternative, Defendant alleges that
27 Plaintiff was contributorily negligent and/or any injuries received by Plaintiff was the
28 result of an intervening/superseding cause or occurred as a result of the negligence of

1 someone other than Defendant, all of which bars recovery to Plaintiff herein from
2 Defendant.

3 4. As and for a separate defense and in the alternative, Defendant alleges that
4 Plaintiff was negligent, in whole or in part, thereby reducing or eliminating any damages
5 owing by Defendant by way of comparative negligence.

6 5. As and for a separate defense and in the alternative, Defendant alleges that
7 Plaintiff assumed the risk of her damages, acted in direct and intentional violation of
8 Arizona law, and acted intentionally and knowingly, jeopardizing her safety and well-
9 being, all of which bar recovery or reduce recovery to the Plaintiff herein from Defendant.

10 6. As and for a separate defense and in the alternative, Defendant alleges that
11 if, indeed, it is determined to be liable for the allegations alleged in the Complaint, then
12 Defendant is entitled to contribution from other Defendants, named and unnamed, by way
13 of the doctrine of contribution.

14 7. As and for a separate defense and in the alternative, Defendant alleges that
15 Plaintiff was a trespasser on the premises; as such, any duty owed to Plaintiff was to
16 refrain from intentionally injuring Plaintiff.

17 8. As and for a separate defense and in the alternative, Defendant alleges that it
18 did not breach any applicable duty or standard of care to Plaintiff.

19 9. As and for a separate defense and in the alternative, Defendant alleges it
20 exercised due care with regards to Plaintiff's safety and the safety of the patrons within its
21 store.

22 10. As and for a separate defense and in the alternative, Defendant alleges that
23 the condition that caused Plaintiff's alleged harm was open and obvious, and readily
24 apparent to any individual patrons exercising due care on their own behalf.

25 11. As and for a separate defense and in the alternative, Defendant alleges that it
26 had no actual or constructive notice of the condition that allegedly caused Plaintiff's harm,
27 and therefore cannot be liable to Plaintiff for any damages sustained as a consequence of
28 the alleged dangerous condition's existence.

1 WHEREFORE, having fully answered Plaintiff's Complaint, Defendant prays that
2 same be dismissed, and that Defendant be awarded its costs herein. Defendant demands a
3 jury trial as to all triable issues.

4 Respectfully submitted,

5 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**

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7 Dated: August 22, 2017

By: /s/

8 Grant D. Waterkotte, Esq.
9 Attorneys for Defendant
KMART CORPORATION

10 ***

11 ORIGINAL of the foregoing electronically filed
12 this 22nd day of August, 2017.

13 COPY of the foregoing
14 mailed this 22nd day of August, 2017, to:

15 Stanley M. Slonaker, Esq.
16 343 West Roosevelt Street, Suite 210
17 Phoenix, Arizona 85003-1324
18 Tel.: (602) 258-1121

19 Fax:
20 Email: Stan@SSlonaker.us

21 *Attorneys for Plaintiff
JOSE ACOSTA*

22 By: Natalia Aguilera

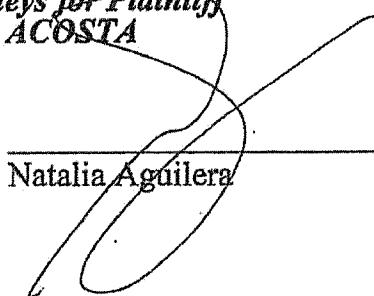


EXHIBIT C

1 Thomas M. Klein (Bar No. 010954)
2 Iman R. Soliman (Bar No. 021333)
3 BOWMAN AND BROOKE LLP
4 Suite 1600, Phoenix Plaza
5 2901 North Central Avenue
6 Phoenix, Arizona 85012
7 Main: (602) 643-2300
Fax: (602) 248-0947
Thomas.Klein@bowmanandbrooke.com
Iman.Soliman@bowmanandbrooke.com
Minute Entries: mme@phx.bowmanandbrooke.com
8 Attorneys for Defendant BCI Coca-Cola Bottling Company of Los Angeles

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF MARICOPA**

11 JOSE ACOSTA,

12 Plaintiff,

13 vs.

14 KMAR CORPORATION, a foreign
15 corporation, K-MART CENTER
16 LIMITED PARTNERSHIP, an Arizona
17 limited partnership, BCI COCA-COLA
18 BOTTLING COMPANY OF LOS
19 ANGELES, a foreign corporation,
COCA-COLA REFRESHMENTS U.S.A.
INC., a foreign corporation, JOHN DOE
I-X, BLACK & WHITE ENTITY I-X,

Defendants.

Case No. CV2017-006938

**BCI COCA-COLA BOTTLING
COMPANY OF LOS ANGELES'S
ANSWER TO PLAINTIFF'S
COMPLAINT**

(Assigned to the Hon. Karen Mullins)

20 Defendant BCI Coca-Cola Bottling Company of Los Angeles ("BCI") for its separate
21 Answer to Plaintiff's Complaint ("Complaint"), denies each matter alleged against BCI
22 except those matters specifically admitted or qualifiedly answered below, and hereby
23 answers plaintiff's Complaint as follows:

INTRODUCTION

24 1. BCI denies the allegations in paragraph 1 of the Complaint that are directed at
25 BCI. BCI denies that Coca-Cola Refreshments U.S.A. Inc. is a proper party in this action.
26 To the extent any of the allegations are directed at other defendants, BCI is without
27 knowledge or information sufficient to form a belief as to the truth of such allegations.
28

PARTIES AND JURISDICTION

2. BCI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Complaint.

3. BCI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint.

4. BCI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Complaint.

5. BCI admits that it is a Delaware corporation registered in the State of Arizona; and admits that BCI distributes Dr. Pepper to certain entities in Phoenix, Arizona. BCI denies all remaining allegations in paragraph 5 of the Complaint.

6. BCI denies the allegations in paragraph 6 and denies that Coca-Cola Refreshments U.S.A. Inc. is a proper party in this action.

7. Paragraph 7 does not appear to contain any allegations against BCI and therefore no response is required. To the extent that paragraph 7 of the Complaint contains any allegations against BCI, they are denied.

8. BCI admits that it is authorized to conduct business in the State of Arizona. BCI denies that Coca-Cola Refreshments U.S.A. Inc. is a proper party in this action. To the extent any of the allegations are directed at other defendants, BCI is without knowledge or information sufficient to form a belief as to the truth of such allegations.

9. BCI admits that this purports to be an action relating to an incident that occurred in Maricopa County. To the extent any of the allegations are directed at other defendants, BCI is without knowledge or information sufficient to form a belief as to the truth of such allegations. BCI denies all remaining allegations in paragraph 9 of the Complaint.

10. BCI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Complaint but denies liability for the matters alleged in the Complaint.

28

STATEMENT OF FACTS

11. BCI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Complaint.

12. BCI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Complaint.

13. BCI denies the allegations in paragraph 13 of the Complaint that are directed at BCI. BCI denies that Coca-Cola Refreshments U.S.A. Inc. is a proper party in this action. To the extent any of the allegations are directed at other defendants, BCI is without knowledge or information sufficient to form a belief as to the truth of such allegations.

14. BCI denies the allegations in paragraph 14 of the Complaint and denies that Coca-Cola Refreshments U.S.A. Inc. is a proper party in this action.

15. The allegations in paragraph 15 of the Complaint state a legal conclusion for which no response is required. To the extent a response is required, BCI denies the matters alleged in paragraph 15 of the Complaint.

16. BCI denies the allegations in paragraph 16 of the Complaint that are directed at BCI. BCI denies that Coca-Cola Refreshments U.S.A. Inc. is a proper party in this action. To the extent any of the allegations are directed at other defendants, BCI is without knowledge or information sufficient to form a belief as to the truth of such allegations.

17. BCI denies the allegations in paragraph 17 of the Complaint that are directed at BCI. To the extent any of the allegations are directed at other defendants, BCI is without knowledge or information sufficient to form a belief as to the truth of such allegations.

18. BCI denies the allegations in paragraph 18 of the Complaint that are directed at BCI. To the extent any of the allegations are directed at other defendants, BCI is without knowledge or information sufficient to form a belief as to the truth of such allegations.

19. BCI admits that this action purports to be regarding an alleged incident that occurred at K-Mart located at 2526 W. Northern Avenue in Phoenix, Arizona, on May 7, 2015 (“subject incident”); and admits that plaintiff alleges he was injured as a result of the

1 subject incident. BCI denies liability for the matters alleged in paragraph 19 and denies all
2 remaining allegations in paragraph 19 of the Complaint.

3 20. BCI is without knowledge or information sufficient to form a belief as to the
4 truth of the allegations in paragraph 20 pertaining to plaintiff's alleged injuries but denies
5 liability for the matters alleged in paragraph 20 of the Complaint.

6 21. BCI denies the allegations in paragraph 21 of the Complaint that are directed at
7 BCI. BCI denies that Coca-Cola Refreshments U.S.A. Inc. is a proper party in this action.
8 To the extent any of the allegations are directed at other defendants, BCI is without
9 knowledge or information sufficient to form a belief as to the truth of such allegations.

10 22. BCI denies the allegations in paragraph 22 of the Complaint.

11 **COUNT ONE**

12 **(Negligence, Premises Liability)**

13 23. In response to paragraph 23 of the Complaint, BCI incorporates herein by
14 reference its responses to paragraph 1 through 22.

15 24. The allegations in paragraph 24 of the Complaint are directed at other
16 defendants. To the extent any of the allegations are directed at BCI, they are denied.

17 25. The allegations in paragraph 25 of the Complaint are directed at other
18 defendants. To the extent any of the allegations are directed at BCI, they are denied.

19 26. The allegations in paragraph 26 of the Complaint are directed at other
20 defendants. To the extent any of the allegations are directed at BCI, they are denied.

21 27. The allegations in paragraph 27 of the Complaint are directed at other
22 defendants. To the extent any of the allegations are directed at BCI, they are denied.

23 **COUNT TWO**

24 **(Negligence, Premises Liability)**

25 28. In response to paragraph 28 of the Complaint, BCI incorporates herein by
26 reference its responses to paragraph 1 through 27.

27 29. BCI denies any duty to plaintiff except those duties imposed by law; and
28 denies any liability for breach of any duty alleged or implied in paragraph 29 of the

1 Complaint. BCI denies that Coca-Cola Refreshments U.S.A. Inc. is a proper party to this
2 action and denies that BCI or Coca-Cola Refreshments U.S.A. Inc. or their business
3 activities are collectively or jointly engaged in the matters alleged in the Complaint. BCI
4 denies all remaining allegations in paragraph 29 of the Complaint.

5 30. BCI denies any duty to plaintiff except those duties imposed by law; and
6 denies any liability for breach of any duty alleged or implied in paragraph 30 of the
7 Complaint. BCI denies that Coca-Cola Refreshments U.S.A. Inc. is a proper party to this
8 action and denies that BCI or Coca-Cola Refreshments U.S.A. Inc. or their business
9 activities are collectively or jointly engaged in the matters alleged in the Complaint. BCI
10 denies all remaining allegations in paragraph 30 of the Complaint.

11 31. BCI denies any duty to plaintiff except those duties imposed by law; and
12 denies any liability for breach of any duty alleged or implied in paragraph 31 of the
13 Complaint. BCI denies that Coca-Cola Refreshments U.S.A. Inc. is a proper party to this
14 action and denies that BCI or Coca-Cola Refreshments U.S.A. Inc. or their business
15 activities are collectively or jointly engaged in the matters alleged in the Complaint. BCI
16 denies all remaining allegations in paragraph 31 of the Complaint.

17 32. BCI denies any duty to plaintiff except those duties imposed by law; and
18 denies any liability for breach of any duty alleged or implied in paragraph 32 of the
19 Complaint. BCI denies that Coca-Cola Refreshments U.S.A. Inc. is a proper party to this
20 action and denies that BCI or Coca-Cola Refreshments U.S.A. Inc. or their business
21 activities are collectively or jointly engaged in the matters alleged in the Complaint. BCI
22 denies all remaining allegations in paragraph 32 of the Complaint.

23 **COUNT THREE**

24 **(Negligent Supervision)**

25 33. In response to paragraph 33 of the Complaint, BCI incorporates herein by
26 reference its responses to paragraph 1 through 32.

27 34. The allegations in paragraph 34 of the Complaint are directed at other
28 defendants. To the extent any of the allegations are directed at BCI, they are denied.

35. The allegations in paragraph 35 of the Complaint are directed at other defendants. To the extent any of the allegations are directed at BCI, they are denied.

36. The allegations in paragraph 36 of the Complaint are directed at other defendants. To the extent any of the allegations are directed at BCI, they are denied.

37. The allegations in paragraph 37 of the Complaint are directed at other defendants. To the extent any of the allegations are directed at BCI, they are denied.

38. The allegations in paragraph 38 of the Complaint are directed at other defendants. To the extent any of the allegations are directed at BCI, they are denied.

COUNT FOUR

(Negligent Supervision)

39. In response to paragraph 39 of the Complaint, BCI incorporates herein by reference its responses to paragraph 1 through 38.

40. BCI denies the allegations in paragraph 40 of the Complaint.

41. BCI denies any duty to plaintiff except those duties imposed by law; and denies any liability for breach of any duty alleged or implied in paragraph 41 of the Complaint. BCI denies that Coca-Cola Refreshments U.S.A. Inc. is a proper party to this action and denies that BCI or Coca-Cola Refreshments U.S.A. Inc. or their business activities are collectively or jointly engaged in the matters alleged in the Complaint. BCI denies all remaining allegations in paragraph 41 of the Complaint.

42. BCI denies any duty to plaintiff except those duties imposed by law; and denies any liability for breach of any duty alleged or implied in paragraph 42 of the Complaint. BCI denies that Coca-Cola Refreshments U.S.A. Inc. is a proper party to this action and denies that BCI or Coca-Cola Refreshments U.S.A. Inc. or their business activities are collectively or jointly engaged in the matters alleged in the Complaint. BCI denies all remaining allegations in paragraph 42 of the Complaint.

43. BCI denies the allegations in paragraph 43 of the Complaint.

44. BCI denies the allegations in paragraph 44 of the Complaint.

10

DAMAGES

45. BCI denies the allegations in paragraph 45 of the Complaint that are directed at BCI. To the extent any of the allegations are directed at other defendants, BCI is without knowledge or information sufficient to form a belief as to the truth of such allegations.

46. BCI denies the allegations in paragraph 46 of the Complaint that are directed at BCI. BCI denies that Coca-Cola Refreshments U.S.A. Inc. is a proper party in this action. To the extent any of the allegations are directed at other defendants, BCI is without knowledge or information sufficient to form a belief as to the truth of such allegations.

47. BCI denies the allegations in paragraph 47 of the Complaint that are directed at BCI. BCI denies that Coca-Cola Refreshments U.S.A. Inc. is a proper party in this action. To the extent any of the allegations are directed at other defendants, BCI is without knowledge or information sufficient to form a belief as to the truth of such allegations. BCI also denies plaintiff's prayer for judgment following paragraph 47 of the Complaint.

AFFIRMATIVE DEFENSES

For its separate, alternative, and affirmative defenses, BCI alleges as follows:

1. Plaintiff's Complaint against BCI may be subject to dismissal, in whole or in part, pursuant to Rule 12(b), Arizona Rules of Civil Procedure for, among other things, failure to state a claim for which relief can be granted.

2. To the extent that plaintiff failed to file any of his causes of action within the applicable statute of limitations, those claims are time barred.

3. BCI alleges that plaintiff's alleged injuries and damages, if any, may have been the result of plaintiff's own negligence, carelessness, inattention, assumption of risk, or otherwise wrongful and unsafe act; and plaintiff's damages, if any, should be reduced or eliminated by his percentage of negligence and fault under the doctrine of comparative fault.

4. BCI alleges that any damages sustained or incurred by plaintiff were the result of, and were caused solely and proximately by, the act, fault, conduct, or negligence of persons or entities other than this answering defendant; such negligence, fault, act, or conduct was of a character as not reasonable to be expected to happen in the natural

1 intervening, and superseding cause and therefore the sole proximate cause of any such
2 damage, thus relieving BCI of any liability.

3 5. BCI alleges that plaintiff may have failed to reasonably mitigate his damages.

4 6. There may be lack of joinder of one or more indispensable parties who should
5 and must be joined, and without joinder of these proper parties, complete relief cannot be
6 accorded among those already attempted to be made parties to this civil action.

7 7. To the extent that plaintiff has received payment from any alleged joint
8 tortfeasor in full satisfaction of any of his alleged injuries and/or claims against BCI and/or
9 any other alleged joint tortfeasor, plaintiff's Complaint is barred by the defenses of payment
10 and accord and satisfaction.

11 8. BCI affirmatively alleges that plaintiff's injuries and damages, if any, were
12 caused or contributed to by the negligence of plaintiff, his agents or employees, or the joint
13 or concurrent negligence of the plaintiff, or his agents or employees and other persons, firms,
14 corporation, or body politics over whom this answering defendant had no control or right of
15 control, and that this comparative negligence bars any recovery by plaintiff.

16 9. BCI affirmatively alleges that plaintiff's damages, if any, must be reduced by
17 the comparative fault of plaintiff, and other persons, including responsible non-parties
18 pursuant to A.R.S. § 12-501 et seq.

19 10. BCI affirmatively alleges that plaintiff's recovery of damages and losses, if
20 any, must be reduced by the amounts received from collateral sources.

21 11. BCI affirmatively alleges that plaintiff's recovery of damages and losses, if
22 any, are subject to applicable constitutional and statutory caps and limitations.

23 12. BCI affirmatively alleges that plaintiff assumed the risk of injuries and
24 damages claimed as a result of the events set forth in plaintiff's Complaint and plaintiff's
25 assumption of the risk bars plaintiff's recovery.

26 13. BCI expressly preserves and does not knowingly or intentionally waive any of
27 the other affirmative defenses set forth in Rule 8, Arizona Rules of Civil Procedure or in
28

1 A.R.S. § 12-683, which discovery may reveal to be applicable, or any other matter
2 constituting an avoidance or affirmative defense.

3 WHEREFORE, Defendant BCI requests that plaintiff take nothing by his Complaint
4 and that the same be dismissed with prejudice on the merits, that BCI has and recover its
5 costs, disbursements, and attorney fees incurred in this matter, and that BCI receives all other
6 relief that the Court deems to be just and reasonable.

7 DATED this 13th day of October, 2017.

8 BOWMAN AND BROOKE LLP

9 By: /s/ Iman R. Soliman

10 Thomas M. Klein
11 Iman R. Soliman
12 Suite 1600, Phoenix Plaza
13 2901 North Central Avenue
14 Phoenix, Arizona 85012-2736
15 Attorneys for Defendant BCI Coca-Cola
16 Bottling Company of Los Angeles

17 **ORIGINAL** of the foregoing electronically filed
18 this 13th day of October, 2017, with:

19 <https://turbocourt.com>

20 **COPY** of the forgoing mailed
21 this 13th day of October, 2017, to:

22 Stanley M. Slonaker
23 ATTORNEY AT LAW
24 343 West Roosevelt Street, Suite 210
25 Phoenix, AZ 85003-1324
Stan@SSLonaker.us
Attorneys for Plaintiff

26 Grant D. Waterkotte
27 PETTIT KOHN INGRASSIA LUTZ & DOLIN PC
28 11622 El Camino Real, Suite 300
San Diego, CA 92130-2051
gwaterkotte@pettitkohn.com
Attorneys for Kmart Corporation

29 /s/ Kelly Brubaker

EXHIBIT D

Chris DeRose, Clerk of Court
*** Electronically Filed ***
10/22/2018 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-006938

10/19/2018

HONORABLE JAMES D. SMITH

CLERK OF THE COURT

P. Culp
Deputy

JOSE ACOSTA

STANLEY M SLONAKER

v.

K MART CORPORATION, et al.

GRANT D WATERKOTTE

IMAN RITA SOLIMAN
ALTERNATIVE DISPUTE
RESOLUTION - CCC
JUDGE J. SMITH

MINUTE ENTRY

The Court received notification that a petition under the Bankruptcy Code has been filed by **Defendant Kmart Corporation** (debtor) in case number 18-23538 (RDD).

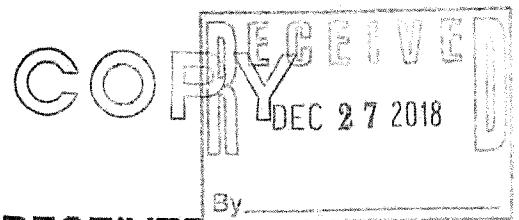
IT IS ORDERED placing this case/claim(s) on the Dismissal Calendar until **April 15, 2019**, as to **Defendant Kmart Corporation** (debtor). This case/claim(s) will be dismissed on **April 15, 2019**, unless prior to the scheduled dismissal date Plaintiff demonstrates he has moved to lift the stay but the request has not been ruled upon or has been denied; or he has sought to reduce the claim(s) against the debtor to judgment in the Bankruptcy Court in an adversary proceeding and the adversary proceeding has not yet been resolved despite diligence in seeking such a resolution; or he has obtained severance of the claim(s) against the debtor from the claim(s) against the other parties to the action, if any; or he has demonstrated a reasonable basis for continuance of the case on the dismissal calendar.

IT IS FURTHER ORDERED vacating the telephonic trial setting conference set for February 25, 2019 at 8:30 a.m. in this division.

EXHIBIT E

Fill in this information to identify the case:

Debtor 1	<u>Sears Holdings Corporation, et al.</u>
Debtor 2 (Spouse, if filing)	_____
United States Bankruptcy Court for the: Southern District of New York	
Case number <u>18-23538 (RDD)</u>	



Official Form 410

Proof of Claim

PRIME CLERK LLC

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Fillers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Creditor

1. Who is the current creditor?	<u>Jose Acosta</u> Name of the current creditor (the person or entity to be paid for this claim)		
	Other names the creditor used with the debtor _____		
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____		
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)	
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<u>Stanley M. Slonaker Attorney at Law</u> Name <u>343 W. Roosevelt Street, Suite 210</u> Number Street <u>Phoenix, AZ 85003</u> City State ZIP Code	Name Number Street	City State ZIP Code
	<u>(602) 258-1121</u> Contact phone _____	Contact phone _____	
	<u>Stan@SSlonaker.us</u> Contact email _____	Contact email _____	
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____			
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on <u>MM / DD / YYYY</u>		
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____		

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
7. How much is the claim?	\$ <u>Undetermined</u> . Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. <u>Personal Injury, see attached Summons, Complaint and Answer</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. Nature of property: <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____
	 Basis for perfection: Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
	 Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
	 Amount necessary to cure any default as of the date of the petition: \$ _____
	 Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____

<p>12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?</p> <p>A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.</p>		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Check one:	Amount entitled to priority
		<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
		<input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
		<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
		<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
		<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
		<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it.
FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both.
18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.
 I am the creditor's attorney or authorized agent.
 I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
 I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 11/30/2018

MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name	Stanley Myron Slonaker		
	First name	Middle name	Last name
Title	Attorney for Jose Acosta		
Company	Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	343 W. Roosevelt Street, Suite 210		
	Number	Street	
	Phoenix,		AZ 85003
	City	State	ZIP Code
Contact phone	(602) 258-1121		Email Stan@SSlonaker.us

EXHIBIT F

Prime Clerk
830 Third Ave, 9th Floor
New York, NY 10022



In re Sears Holdings Corporation
Case No. 18-23538
United States Bankruptcy Court for the Southern District of New York (White Plains)

**PRIME CLERK RECEIVED YOUR
PROOF OF CLAIM.**

Date Filed: 12/6/2018
Proof of Claim No.: 5974

For additional information, please visit
<http://restructuring.primeclerk.com/Sears>,
or call us at 844.384.4460.

Jose Acosta
Attorney at Law
Stanley M. Slonaker
343 West Roosevelt Street Suite 210
Phoenix, AZ 85003-1324

Prime Clerk
830 Third Ave, 9th Floor
New York, NY 10022

In re Sears Holdings Corporation
Case No. 18-23538
United States Bankruptcy Court for the Southern District of New York (White Plains)

**PRIME CLERK RECEIVED YOUR
PROOF OF CLAIM.**

Date Filed: 12/6/2018
Proof of Claim No.: 5974

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or call us at 844.384.4460.

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Attorney at Law
Stanley M. Slonaker
343 West Roosevelt Street Suite 210
Phoenix, AZ 85003-1324

(3)